

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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| In the matter of the application of               | ) |                  |
| <b>CONSUMERS ENERGY COMPANY</b>                   | ) | Case No. U-18345 |
| for authority to amend its renewable energy plan. | ) |                  |
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At the June 15, 2017 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman  
Hon. Norman J. Saari, Commissioner  
Hon. Rachael A. Eubanks, Commissioner

**ORDER**

On June 21, 2013, Consumers Energy Company (Consumers) filed an application, under MCL 460.1033(3), requesting *ex parte* Commission review and approval of the Wind Turbine Purchase Agreement (WTPA) for the Cross Winds™ Energy Park (CWEP). Cross Winds is a 105.4 megawatt wind farm located in Tuscola County, Michigan. The Commission approved this application on June 28, 2013 in Case No. U-15805.

On November 14, 2016, Consumers filed an application for *ex parte* Commission review and approval of the amended WTPA with General Electric Company (GE). The contract, to secure an additional 19 wind turbine generators (WTG) for CWEP II with an option to purchase 33 WTGs for a future build to be called CWEP III, was approved by the Commission on December 20, 2016 in Case No. U-15805. Preliminary construction on CWEP II began in 2016 while construction on CWEP III will begin in 2019. However, recovery for CWEP III costs will be addressed if

Consumers elects to exercise its option under the WTG purchase agreement and seeks Commission approval.

On February 13, 2017, the Company filed its application seeking approval of the Engineering, Procurement and Construction (EPC) contract with White Construction, Inc., to construct CWEP II. Similar to the WTG agreement, the EPC contract includes the option to construct CWEP III. The Commission approved this contract on March 10, 2017, in Case No. U-15805.

The Commission approved Consumers' renewable energy plan (REP) most recently in Case No. U-17792. The approved plan included the construction of an additional wind farm in 2022. Due to the extension of the federal production tax credit (PTC), the company saw benefit in moving the construction date of CWEP II up to start in 2016. And, by making a safe harbor payment to GE for WTGs by the end of 2016, the company has secured the full PTC for CWEP II and CWEP III.

In this application, Consumers states that the installed cost for CWEP II will be \$45 per megawatt-hour (MWh) and the cost of the CWEP III will be \$46 per MWh, which is less than the installed cost of \$87 per MWh assumed in Consumer's REP for the 2022 wind farm.

Consumers has requested: (1) that the Commission approve the company's request to expand its existing Cross Winds Energy Park and to accelerate the timing of the proposed project to complete CWEP III; (2) approve the transfer prices to be assigned to CWEP III; and (3) provide assurance that the full costs of the CWEP III project will be recoverable through the combined application of the transfer price mechanism, application of the renewable energy surcharges, and, subject to the end of the REP period, an appropriate ratemaking mechanism.

Consumers states that the requested approvals will not result in an alteration or amendment in rates or rate schedules and will not result in an increase in the cost of service to customers because

the contracts are consistent with the planning activities, expenses, and revenue recovery mechanisms and surcharges described in the company's REP in Case No. U-17792, which was approved by the Commission on March 29, 2016. Therefore, Consumers' application may be authorized and approved without notice or hearing pursuant to MCL 460.6a(1).

On May 4, 2017, the Independent Power Producers Coalition of Michigan (IPPC) filed a response to Consumers' application and a request for a hearing. The IPPC claimed that Consumers' request for *ex parte* relief cannot be lawfully granted because the relief would violate the non-discrimination requirements of the Public Utility Regulatory Policies Act of 1978, 16 USC 2601 *et seq.* (PURPA). According to the IPPC, Section 210(b)(2) of PURPA, and 18 CFR 292.304(a)(1)(ii), require that rates set for PURPA qualifying facilities (QFs) may not favor a provider's own generation resources. However, IPPC maintains that Consumers' proposal to collect the costs of CWEP III through the transfer price mechanism and incremental cost of compliance would exceed the avoided cost amount the company proposes to pay QFs. IPPC further contends:

Consumers requested 'full actual costs' for its Company-owned renewable resources (TPS plus an extra renewable energy surcharge). These alleged 'full actual costs' have not been examined within the context of the costs for IPPC members' QFs – if they were to receive the 'full avoided costs' due to them based on Consumers' energy and capacity costs. Those QF costs may very well be less than the 'full actual costs' that Consumers seeks herein. Therefore, Consumers cannot claim that its Company-owned renewable resources, especially new Company-owned renewable resources, are not an increase in rates to its customers.

IPPC's response, ¶ 9. IPPC therefore requests that the Commission deny Consumers' request for *ex parte* treatment and provide an opportunity for a contested case.

In response, Consumers contends that its proposed amendment to its REP does not increase any customer's rates because the company only requests approval to move the planned 2022 wind farm expansion to 2019, reiterating that the anticipated levelized cost of CWEP III is \$46 per

MWh, significantly below the \$87 per MWh cost in the company's REP. Consumers repeats that its proposed amendment will not result in an increase in any customer's rates, and the Commission has consistently found that REP amendments can be approved *ex parte* if there is no change to the renewable energy incremental cost of compliance.

Consumers also contends that IPPC misconstrues cost recovery for company-owned projects, noting that IPPC incorrectly states that the company is seeking to recover the costs of CWEP III based on the amounts in the transfer price schedule. According to Consumers, "the transfer price schedule limits the RE Plan costs that can be transferred to PSCR costs; it does not specify the actual costs that the Company recovers. Also, the Commission has required that the transfer cost associated with Company-owned projects be limited to the lesser of the transfer price or the actual levelized cost over the asset life." Consumers' response, p. 5.

Finally, Consumers asserts that its proposal to amend its REP does not violate PURPA because QFs are currently receiving full avoided costs under existing contracts, and the Commission is reviewing, and will approve, updated avoided costs in Case No. U-18090. Once new avoided costs are approved, new contracts will be set at those rates. Thus, IPPC's claims are without merit.

### Discussion

MCL 460.1022 provides in part:

(4) If an electric provider proposes to amend its plan after the review process under subsection (3), the electric provider shall file the proposed amendment with the commission. For an electric provider whose rates are regulated by the commission, if the proposed amendment would modify the revenue recovery mechanism, the commission shall conduct a contested case hearing on the amendment pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. After the hearing and within 90 days after the amendment is filed, the commission shall approve, with any changes consented to by the electric provider, or reject the plan and the proposed amendment or amendments to the plan.

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(5) For an electric provider whose rates are regulated by the commission, the commission shall approve the plan or amendments to the plan if the commission determines:

- (a) That the plan is reasonable and prudent. In making this determination, the commission shall take into consideration projected costs and whether or not projected costs in prior plans were exceeded.
- (b) That the plan is consistent with the purpose and goal set forth in section 1(2) and (3) and meets the renewable energy credit standard through 2021.

MCL 460.1028 provides in part:

(3) Subject to subsection (5), each electric provider shall meet the renewable energy credit standards with renewable energy credits obtained by 1 or more of the following means:

- (a) Generating electricity from renewable energy systems for sale to retail customers.
- (b) Purchasing or otherwise acquiring renewable energy credits with or without the associated renewable energy.
- (4) For an electric provider whose rates are regulated by the commission, the electric provider shall submit a contract entered into for the purposes of subsection (3) to the commission for review and approval. If the commission approves the contract, it shall be considered consistent with the electric provider's renewable energy plan. The commission shall not approve a contract based on an unsolicited proposal unless the commission determines that the unsolicited proposal provides opportunities that may not otherwise be available or commercially practical through a competitive bid process.

The Commission has reviewed Consumers' application and finds that the application should be approved as consistent with the company's REP and Act 295. The Commission notes that the projected cost per MWh under the contract is less than what was approved in Consumers' REP. The Commission also finds that *ex parte* review and approval is appropriate because the contract will not affect rates or rate schedules resulting in an increase in the cost of service to customers. And the proposed REP amendment does not modify the surcharge amount, which is currently set at \$0.00. MCL 460.6a(1); MCL 460.1022(4).

The Commission rejects IPPC's claims that Consumers' request violates PURPA because, among other things, the company is not seeking to recover amounts contained in the transfer price schedule, but rather an amount based on the levelized per MWh cost of the project, which is a significantly lesser amount. Moreover, issues concerning avoided cost under PURPA are being addressed for Consumers in Case No. U-18090, in which IPPC is participating.

THEREFORE, IT IS ORDERED that the application to expand Consumers Energy Company's Cross Winds Energy Park and to accelerate the timing of the proposed project to complete Phase III of the Cross Winds project in 2019 is approved as in compliance with Public Act 295 of 2008.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov) and to the Michigan Department of the Attorney General - Public Service Division at [pungp1@michigan.gov](mailto:pungp1@michigan.gov). In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Sally A. Talberg, Chairman

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Norman J. Saari, Commissioner

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Rachael A. Eubanks, Commissioner

By its action of June 15, 2017.

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Kavita Kale, Executive Secretary